

FCC MAIL SECTION

DEADLINE FOR

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Federal Communications Commission

DA 97-589

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Slidell and Kenner, Louisiana)

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MM Docket No. 97-102
RM-8969

NOTICE OF PROPOSED RULE MAKING

Adopted: March 19, 1997

Released: March 28, 1997

Comment Date: May 19, 1997

Reply Comment Date: June 3, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Phase II Broadcasting ("petitioner"), licensee of Station WLTS-FM, Channel 287C1, Slidell, Louisiana, proposing the reallocation of Channel 287C1 from Slidell to Kenner, Louisiana, and the modification of Station WLTS-FM's license to specify Kenner as its community of license. Petitioner states its intention to apply for the channel, if reallocated to Kenner.

2. Petitioner is filing its request pursuant to the provisions set forth in Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Petitioner claims that the allotment of Channel 287C1 to Kenner will not deprive Slidell of its sole local service since AM Station WSLA will continue to provide service to the community. Petitioner submits that while major portions of Kenner are located within the New Orleans Urbanized Area, it claims that because portions of Kenner also fall outside the New Orleans Urbanized Area, this is a compelling indication of Kenner's independence from the Urbanized Area. In support of its proposal, petitioner has submitted a Tuck analysis advocating its claim that Kenner is sufficiently independent of the New Orleans Urbanized Area to merit a first

local service preference.¹ In this regard, petitioner states that the channel reallocation will not impact Station WLTS-FM's current signal population coverage since petitioner is not proposing to move the station's transmitter site. With respect to size and proximity, petitioner submits that Kenner is roughly 10 miles west of New Orleans and has a population of 73,242. It states that Kenner is roughly one-sixth the size of New Orleans and is bounded on the north by Lake Pontchartrain, on the south by the Mississippi River, on the east by unincorporated Jefferson Parish, and on the west by St. Charles Parish.

3. With respect to the third criteria of interdependence, petitioner has submitted a letter from the Mayor of Kenner, who has stated that Kenner provides a full range of services to its residents. They include police and fire protection, sanitation services, construction and maintenance of highways. The community is governed by an elected Mayor and a seven (7) person Council. In addition, petitioner notes that Kenner has a number of parks, recreational areas, its own newspaper, health facilities, hospital, and hundreds of businesses. While some residents do work in the city of New Orleans, petitioner claims that a majority of Kenner's working residents choose to work in Kenner. Petitioner states that Kenner's residents have organized and regularly participate in a number of Civic Organizations. Finally, petitioner argues that because Kenner is a separate and distinct community, the reallocation of Channel 287C1 would result in a preferred allotment arrangement consistent with the Commission's allotment priorities, citing Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

4. We recognize that Kenner is partially located within the New Orleans Urbanized Area. However, petitioner is not proposing to relocate Station WLTS-FM's transmitter site, therefore the reallocation will not result in any new gain or loss areas. Based on the information before us, we believe petitioner's proposal warrants consideration since the allotment of Channel 287C1 to Kenner could provide the community with its first local aural transmission service, without depriving Slidell of its sole local aural service. An engineering analysis has determined that Channel 287C1 can be allotted to Kenner in compliance with the Commission's minimum distance separation requirements at the licensed site of Station WLTS-FM.² In accordance with the provisions of Section 1.420(i) of the Commission's

¹ See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc. (KFRC) ("KFRC"), 5 Fed. 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Red 5374 (1988). KFRC and Tuck clarified the type of evidence considered in determining whether a suburban community should be denied a first local service preference. First, the Commission examines "signal population coverage," i.e., the degree to which the proposed station could provide service not only to the suburban community, but also to the adjacent metropolis. Second, the Commission examines the size and proximity of the suburban community relative to the adjacent city, and whether the suburban community is within the Urbanized area of the city. Third, the Commission determines the interdependence of the suburban community with the central city.

² The coordinates for Channel 287C1 at Kenner are 29-58-57 NL and 89-57-09 WL.

Rules, we will not accept competing expressions of interest in the use of Channel 287C1 at Kenner, Louisiana.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Slidell, Louisiana	287C1	--
Kenner, Louisiana	--	287C1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before May 19, 1997, and reply comments on or before June 3, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Michael Lamers
Hardy and Carey, LLP
111 Veterans Memorial Boulevard
Suite 255
Metairie, Louisiana 70005
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making

proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.